

*NOTICE OF FINAL DECISION*

*OF BOARD OF APPEALS*

RE: Case No. AA-1678 Lenora Tyler-Burns

Enclosed herewith is a copy of the Board Order setting forth the action taken by the Board of Appeals in your case on the following date: September 30, 2015.

**CERTIFICATE OF SERVICE**

This is to certify that on July 18, 2016, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.

(Original Signed) \_\_\_\_\_  
Anne F. Carter  
Administrator

cc: Petitioner  
DPIE/Enforcement Division  
Office of Law

***BEFORE THE BOARD OF APPEALS FOR PRINCE GEORGE'S COUNTY, MARYLAND***  
***Sitting as the Board of Administrative Appeals***

Petitioner: Lenora Tyler-Burns

Appeal No.: AA-1678

Subject Property: Lot 237, Block A, Colony Square Subdivision, being 6056 South Hil Mar Circle,  
Forestville, Prince George's County, Maryland

Counsel for Petitioner: Charles E. Walton, Esq., Walton Law Group, LLC

Counsel for Prince George's County Department of Permitting, Inspections

and Enforcement ("DPIE"): Jamar Herry, Esq., Associate County Attorney

Witnesses: Renee Jenkins, Rental License Supervisor, DPIE

Richard Johnson, Jr., Single-Family Enforcement Inspector, DPIE

Heard and Decided: September 30, 2015

Board Members Present and Voting: Bobbie S. Mack, Chairperson

Albert C. Scott, Vice Chairman

Anastasia T. Johnson, Member

RESOLUTION

This appeal is brought to the Board of Appeals, sitting as the Board of Administrative Appeals for Prince George's County, Maryland (the "Board"), from the determination of the Department of Permitting, Inspections and Enforcement, Enforcement Division, to issue Notice No. 0432930, dated June 26, 2015, denying Petitioner's application for a license to operate and occupy a rental dwelling at 6056 South Hil Mar Circle, Forestville, Maryland, for failure to provide Certification from the Homeowner's Association indicating that the dwelling unit does not have a lien for non-payment of Common Ownership Community Fees and the dwelling unit does not violate any covenants or by-laws, and informing Petitioner that no further occupancy of any dwelling unit now vacant or becoming vacant in the future, is permitted until a license has actually been issued, on R-T (Townhouse) zoned property located at Lot 237, Block A, Colony Square Subdivision, being 6056 South Hil Mar Circle, Forestville, Prince George's County, Maryland.

Evidence Presented

The following testimony and evidence were presented to the Board for its consideration:

1. The subject property is zoned R-T (Townhouse) and is located within Colony Square Subdivision. Exh. 5. Petitioner is the owner of the subject property. Exhs. 4 and 5.

2. DPIE issued Notice No. 0432930 ("Denial Notice"), dated June 24, 2015, to Petitioner, notifying her that her application for a license to operate and occupy a rental dwelling at the subject property was denied. Exh. 2. The Denial Notice stated that "[p]er Council Bill 89-2012, [Petitioner had] failed to provide the Certification from the Homeowner's Association indicating that the dwelling unit does not have a lien for non-payment of Common Ownership Community Fees and the dwelling unit does not violate any covenants or by-laws." Exh. 2.

3. Petitioner appealed the Denial Notice to the Board on July 8, 2015. Exh. 1. In her appeal letter, Petitioner explained that she does not have any "liens" for non-payment of Common Ownership Community Fees, but "Allied Realty Corp will not provide [her] with a letter of certification/evidence because [she] refused to sign the Colony Square Lease Addendum which makes [her] responsible for [her] tenant's actions." Petitioner further stated that she believes the requirement for her to sign the addendum which makes her financially responsible for another person's action is "signing away [her] rights" to fair treatment under the law. Exh. 1.

4. Counsel for Petitioner argued that in or around 1993 Petitioner began renting the unit and continued renting it up until she received the Denial Notice. Counsel stated that Colony Square Homeowners Association ("Association") passed a resolution in November 2005 (Exh. 13), adding what was purported to be a revision to its by-laws and/or declarations. Counsel contended that the resolution required an addendum to Petitioner's lease with her tenant, the terms of which would make the lease subordinate to the Association instruments. He stated that Petitioner refused to sign the proposed resolution and the Association considered the refusal to sign and add the required addendum to Petitioner's tenant lease a violation of the Association's by-laws. Counsel believed that the Association cannot arbitrarily and capriciously decide to withhold the requested certification simply because of Petitioner's refusal.

5. Counsel for DPIE argued that Petitioner received the Denial Notice for not having a proper railing and renting the home without a rental license and was advised to file an application for a rental license. Petitioner filed an application for a single-family rental license, but without the required certification from the Association. Counsel stated that Petitioner may have a valid issue with the Association, but the County is not involved in that issue. Counsel stated that the DPIE may suspend, revoke or deny a license where a Common Ownership Community, which is a homeowners association, provides documentation that a lien exists or the by-laws/covenants have been violated. He stated that Petitioner has represented that the Association would not provide any certification because she refused to sign the addendum. Counsel stated that pursuant to the requirements in Section 13-183, no information was submitted with the application for review by DPIE.

6. Petitioner testified that the addendum the Association is requiring her to add to her lease would make her financially responsible for the action of the tenant and pondered what would happen if there were a catastrophe.

7. Renee Jenkins testified that she frequently has to deny license applications because of the lack of the proper paperwork and had denied three the day on which the Board hearing occurred. She stated that she never gets involved with (matters related to an applicant and) the homeowners association. She testified that she has never approved a rental license without a certification.

8. Inspector Johnson testified that he inspected the subject property after a complaint was received about a railing.

#### Applicable Code Sections and Authority

Section 13-181(a) of the Prince George's County Code applies to rental housing licensing requirements and states that no person shall conduct or operate or cause to be operated either as owner, lessee, agent, or in any other capacity within the County any single-family rental facility or any multifamily rental facility as defined in Section 13-138(a) without having first obtained a license.

Section 13-316(e) states that "Common Ownership Community" means (1) a condominium, as defined pursuant to state law; (2) a cooperative housing corporation, as defined pursuant to state law; or (3) a homeowners association, as defined pursuant to state law.

Section 13-183(b) states that for an application for a single-family rental facility or multifamily rental facility in a Common Ownership Community, in addition to the information required under Section 13-182, an applicant shall provide the following information: (1) name of the Common Ownership Community; (2) a certification by the applicant that the dwelling unit does not have a lien placed upon it by a Common Ownership Community for non-payment of Common Ownership Community Fees and that the dwelling unit does not violate the covenants or bylaws of the Common Ownership Community. The applicant shall provide evidence with the application to the Director from the Common Ownership Community consistent with this section.

Findings of the Board

After hearing all the testimony and reviewing the evidence presented, the Board finds that:

1. Petitioner's rental facility is a townhouse dwelling unit located within Colony Square Subdivision, which has a homeowners association.
2. Petitioner's homeowners association, Colony Square Homeowners Association, is a Common Ownership Community pursuant to Section 13-316(e).
3. With her rental license application, Petitioner did not provide the evidence required pursuant to Section 13-183(b) that the dwelling unit does not have a lien placed upon it by a Common Ownership Community for non-payment of Common Ownership Community Fees and that the dwelling unit does not violate the covenants or bylaws of the Common Ownership Community.
4. DPIE properly denied Petitioner's application for a rental license because it was not accompanied with the certification required pursuant to Section 13-183(b).

BE IT THEREFORE RESOLVED, by majority vote, Member Johnson abstaining, that the determination of the Department of Permitting, Inspections and Enforcement, Enforcement Division, to issue Notice No. 0432930, dated June 26, 2015, denying Petitioner's application for a license to operate and occupy a rental dwelling at the subject property be and is hereby AFFIRMED.

BOARD OF ADMINISTRATIVE APPEALS

By: (Original Signed)  
Bobbie S. Mack, Chairperson

NOTICE

Within thirty (30) days from the date of this decision, any person, firm, corporation, or governmental agency who was a party to the Board's proceedings and is aggrieved by its decision may file an appeal to the Circuit Court of Prince George's County.